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In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, PETITIONER

v.

THE LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY, LIMITED, AND SUNNYLAND FURNITURE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 28-30) is reported at 107 F. Supp. 405. The majority and dissenting opinions in the Court of Appeals (R. 41-51) are reported at 209 F. 2d 684.

JURISDICTION

The judgment of the Court of Appeals (R. 51) was entered December 22, 1953. The petition for

a writ of certiorari was filed on March 16, 1954, and was granted on May 24, 1954 (R. 53). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether certain tax liens held by the United States were subordinate to an attachment-before-judgment lien accorded by state law to the plaintiff in a civil action, where the federal tax liens arose and were recorded subsequent to the attachment but prior to the entry of judgment in the civil suit.

2. Whether the courts below properly allowed a fee for the services of the garnishee's attorney to be paid out of the fund impressed with the federal tax liens.

STATUTES INVOLVED

Sections 3670, 3671, and 3672 (a), of the Internal Revenue Code of 1939, and Articles 300, 301, 4076, and 4084 of Vernon's Texas Civil Statutes (1925 rev.), are set forth in the Appendix, *infra*, pp. 22-26.

STATEMENT

The material facts may be summarized as follows:[1]

On March 8, 1952, fire destroyed certain property of D. Ray Adams (hereinafter sometimes referred to as "the taxpayer"), doing business as

[1] The District Court made no findings of fact. The material facts are summarized in the opinion of the Court of Appeals (R. 41-51), and are not in dispute.

Adams Furniture & Hardware Company, at Temple, Texas. The loss was covered by fire insurance policies issued by Liverpool & London & Globe Insurance Company, Ltd., and another company. Adjusters for the insurance companies determined the extent of the loss to be $15,153.06, each company agreeing to pay one-half of the liability. (R. 10-11, 42.)

On April 8, 1952, and prior to the payment of the insurance proceeds, the Sunnyland Wholesale Furniture Company filed suit on sworn accounts against the taxpayer in the District Court of Dallas County, Texas, claiming the right to a judgment in the amount of $2,329.27. At the same time a writ of garnishment was issued and served upon the Liverpool Insurance Company, attaching the insurance funds pending the lawsuit. (R. 11, 42.)

On April 18, 1952, during the pendency of the lawsuit against the taxpayer, the Commissioner of Internal Revenue made assessments against the taxpayer and his wife covering income taxes for 1948 to 1950, inclusive. The assessment lists were received in the office of the Collector of Internal Revenue on April 21, 1952, and on April 26, 1952, a notice of tax lien was filed in the office of the County Clerk of Bell County, Texas, in favor of the United States in the sum of $10,417.57, plus interest. (R. 13, 14, 42.)[2] Thereafter the Acting

[2] Previously, in December of 1951, and February of 1952, federal withholding taxes totalling $2,520.05 were assessed against the taxpayer, notice of tax lien in that amount was filed on March 25, 1952, and warrants of distraint covering these taxes were issued on April 7, 1952. (R. 13, 42.) It was

Collector served on the insurer a copy of the notice of tax lien, together with warrants of distraint and notice of levy in the amount of $10,469.96. (R. 11, 42.)

Judgment was entered against the taxpayer and in favor of Sunnyland Wholesale Furniture Company on June 20, 1952, in the sum of $2,516.07, plus interest and costs. (R. 38-39.)

The present proceeding is an outgrowth of the above garnishment proceeding instituted by Sunnyland Wholesale Furniture Company. By an amendment to its answer therein, the garnishee insurance company named the United States as an additional party defendant, and requested a determination of the relative priorities of the garnishor and the United States. It also requested that it be granted a reasonable attorney's fee. The amendment was allowed and process issued commanding the United States to appear and answer in the state court. (R. 2-7.) On petition of the United States (R. 1-2), the interpleader action was removed to the District Court for the Northern District of Texas, and the United States was dismissed as a party defendant and allowed to intervene as a party plaintiff for the purpose of foreclosing its liens for unpaid federal taxes. (R. 7-14.) The insurance company filed responsive pleadings in which it tendered its loss draft in the sum of $7,500.39 into the registry of the court, prayed for an

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admitted below that the federal lien for these taxes is superior to the later attachment lien (R. 44), and accordingly no issue is now presented with respect to those taxes.

order determining the rights of the parties therein, and also for a reasonable attorney's fee in the sum of $500. (R. 15-22.)

The District Court held that the Sunnyland Wholesale Furniture Company, by virtue of its writ of garnishment, had a lien on the funds on deposit in the registry of the court, which was superior to the tax liens of the United States. The District Court also awarded an attorney's fee of $500 payable to counsel for the insurance company out of the funds on deposit. (R. 25-30.) The Court of Appeals affirmed, one judge dissenting. (R. 41-51.)

SUMMARY OF ARGUMENT

Determination of the principal issue here involved is controlled by this Court's decision in *United States* v. *Security Tr. & Sav. Bk.*, 340 U.S. 47 (the doctrine of which was recently reaffirmed in *United States* v. *New Britain*, 347 U.S. 81). The essential facts of the two cases are similar and the same issue of law is involved. In each case, liens were acquired by the United States under Section 3670 of the Internal Revenue Code of 1939 against all of the property and rights to property of a delinquent taxpayer by reason of assessments of federal taxes. The assessment lists were received in the respective Collectors' offices and notices of lien filed in accordance with Section 3672 (a) of the 1939 Code after certain property of the delinquent taxpayer had been attached in connection with a suit against the taxpayer in a local state court, but before judgment was entered in the at-

tachment suit. The *Security Trust* case involved an attachment before judgment under California law, while the instant case involves a garnishment before judgment under Texas law.

The effect of the local liens in relation to provisions of federal law for the collection of taxes due the United States is a federal question, and whatever may be the effect of the doctrine of relation back under state law, it cannot operate to defeat the priority of the federal liens. In *Security Trust*, the attachment lien under California law was held to be contingent and inchoate—merely a *lis pendens* notice that a right to perfect a lien existed—at the time the federal tax liens arose and therefore could not take precedence over the later federal tax liens which arose and were recorded prior to the entry of judgment in the attachment suit. Examination of the Texas statutes and decisions demonstrates that the garnishment lien here involved, in substance and reality, is equally contingent or inchoate—merely a *lis pendens* notice that a right to perfect a lien exists—dependent for its perfection upon the plaintiff's obtaining a favorable judgment in the related suit. Uniformity in the administration of the federal taxing statutes requires that substance rather than terminology be controlling, and that the garnishment lien here be accorded no greater effect as a matter of federal law than that accorded the attachment lien involved in the *Security Trust* case.

While the identity of the lienor and of the property subject to the lien here involved may be suffi-

ciently established to meet the requirements laid down by this Court, the amount of the lien was still indefinite at the time the federal liens attached and could be determined only by taking the further steps necessary to reduce the plaintiff's claim to judgment. The writ of garnishment served only as notice to the garnishee that the plaintiff had asserted a claim against the defendant. But it did not establish either the defendant's liability or the amount of the claim. The resulting lien upon the attached funds in the hands of the garnishee was purely contingent and inchoate until judgment should be entered in the related suit.

In *United States* v. *New Britain, supra,* this Court held that the priority of the statutory liens there involved was to be determined on the principle that "the first in time is the first in right". The opinion makes it clear, however, that the determination of priority of a lien on that basis "must depend on the time it attached to the property in question *and became choate.*" (Italics supplied.) In so holding, it was pointed out that the decision was not contrary to the decision in the *Security Trust* case, which involved an inchoate attachment lien before judgment.

There is no substantive difference between a garnishment lien under Texas law and an attachment lien under California law. Formal or procedural differences between the statutes do not provide a valid basis for distinction if there is to be uniformity in the administration of the tax laws. Garnishments are effective under state law for many

purposes and serve as notice to others who may have dealings with the delinquent taxpayer, but they depend for their perfection entirely upon the garnishor's obtaining a favorable judgment in the related proceeding. To hold the lien of the United States for its unpaid taxes inferior to such a contingent lien would postpone the collection of taxes until the rights of a garnishing plaintiff are finally determined and could be a serious handicap to the Government in the collection of its taxes. "If the purpose of the federal tax lien statute to insure prompt and certain collection of taxes due the United States from tax delinquents is to be fulfilled," as was said in the *Security Tr.* case, *supra*, p. 51, the tax lien cannot be subordinated to such wholly contingent and undetermined claims against the taxpayer.

The court below also erred in affirming the District Court's allowance of an attorney's fee to be paid to the garnishee's attorney out of funds on deposit in the registry of the court which was impressed with the lien of the United States for unpaid taxes. The allowance militated solely against the interest of the United States, since the garnishor was allowed to recover the full amount of its claim, and neither the garnishee nor its attorney had any interest in the fund which was superior to the lien of the United States.

ARGUMENT

I

A Lien of the United States for Its Unpaid Taxes Is Superior to a Prior Inchoate Lien Based on a Garnishment Under State Law Which Is Dependent for Its Perfection Upon the Obtaining of a Judgment and the Issuance of Execution in the Related Civil Action

The principal issue involved in this case is substantially the same as that involved in the next preceding case on the Court's docket (*United States* v. *Acri, et al.*, No. 33, October Term, 1954), except that in this case the writ of garnishment was issued under the laws of the State of Texas, while the attachment involved in *United States* v. *Acri, supra,* was issued under the laws of the State of Ohio. Determination of that issue is controlled by this Court's decision in *United States* v. *Security Tr. & Sav. Bk.*, 340 U. S. 47 (the doctrine of which was recently reaffirmed in *United States* v. *New Britain*, 347 U. S. 81, 86). In our brief in the *Acri* case we have fully discussed the issue relating to the superiority of the Government's tax liens established under Section 3670 of the Internal Revenue Code of 1939, *infra*, p. 22, over inchoate attachment liens provided for by state laws. Our argument on the superiority of Government tax liens over inchoate state liens is set forth at pp. 8-28 of the *Acri* brief, to which we respectfully refer the Court. In the instant case, the facts and the applicable Texas law which gave rise to the inchoate state lien here involved are, briefly, as follows:

On April 8, 1952, the Sunnyland Wholesale Fur-

niture Company filed a suit in the local state court on sworn accounts seeking a money judgment against the taxpayer. At the same time, a writ of garnishment issued out of the state court and was served on the Liverpool & London & Globe Insurance Company, attaching funds owing by the latter to the taxpayer. Judgment in the Sunnyland suit was entered against the taxpayer and in favor of Sunnyland, the garnishor, by the Texas court on June 20, 1952. (R. 36, 38-39.) In the meantime, the Commissioner of Internal Revenue had assessed income taxes against the taxpayer and his wife on assessment lists which were received in the office of the Collector of Internal Revenue on April 21, 1952, and with respect to which notice of lien was duly filed in accordance with Section 3672 (a) of the 1939 Code (Appendix, *infra*, pp. 22-23) on April 26, 1952. (R. 42.) Judgment in the present interpleader action was entered in favor of the garnishor by the Federal District Court on October 7, 1952. (R. 25-27.)

The Texas statutes involved in the instant case are Articles 300, 301, 4076, and 4084, Vernon's Texas Civil Statutes (Appendix, *infra*, pp. 23-26). Article 300 provides that the execution of a writ of attachment upon any property of the defendant subject thereto, unless the writ shall be quashed or otherwise vacated, "shall create a lien from the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold." Article

301, so far as material, provides that should the plaintiff in attachment recover in the suit, such attachment lien shall be foreclosed as in the case of other liens, and the court shall direct the proceeds of the personal property sold to be applied to the satisfaction of the judgment, and the sale of personal property remaining in the hands of the officer and the real estate levied on, to satisfy the judgment.

With respect to garnishment specifically Article 4076 of the Texas Civil Statutes provides that such writs may issue (1) where an original attachment has been issued, (2) where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the defendant has not within his knowledge property in his possession within the state, subject to execution, sufficient to satisfy such debt, and (3) where the plaintiff has a valid subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within the state, subject to execution, sufficient to satisfy such judgment. Finally, Article 4084 of the Texas Civil Statutes provides in material part that from and after the service of the writ of garnishment it shall be unlawful for the garnishee to pay to the defendant any debt or deliver to him any effects, and that any such payment or delivery shall be void and of no effect as to so much of the debt or effects as may be necessary to satisfy the plaintiff's demand. However, the defendant may at any time before judgment replevy any debts, effects, or claims of any kind seized or

garnished by giving bond with adequate sureties as provided in that article.

These statutes, as did the California attachment statutes involved in the *Security Trust* case, *supra*, clearly give the garnishor only an inchoate lien contingent upon his successful prosecution of the main action to a favorable judgment, and he has no right to proceed against the property until such judgment is obtained. A garnishing creditor's rights in the property at the time of garnishment are purely potential and contingent, for the real purpose of the garnishment proceeding is to impound moneys or property in that amount belonging to the debtor and held by the garnishee, thus securing payment of a judgment subsequently recovered if the principal action is prosecuted to a successful conclusion. The garnishment did not give the garnishor any interest in the property of the defendant, nor did it segregate the attached property from the defendant's general estate so as to prevent the attaching of the federal tax liens. Compare *Illinois* v. *Campbell*, 329 U.S. 362. The attachment went no further in establishing either the validity or the amount of the garnishor's claim than did the filing of the complaint on which it was based. It was no more definite in these respects than was the attachment under California law involved in the *Security Trust* case. Compare *United States* v. *Waddill Co.*, 323 U. S. 353, 357-358; *United States* v. *Texas*, 314 U. S. 480, 487.

The decisions of the Texas courts are to that effect. See *Daniel* v. *East Texas Theaters*, 127

S. W. 2d 240 (Tex. Civ. App.); *Cooper* v. *Cocke*, 145 S. W. 2d 275 (Tex. Civ. App.); *New Amsterdam Casualty Co.* v. *Keith*, 273 S. W. 836 (Tex. Com. App.); *Alamo Paint & Wall Paper Co.* v. *Kampmann*, 105 S. W. 2d 492 (Tex. Civ. App.); *Buie-Crawford Co.* v. *Cleburne Nat. Bank*, 111 S. W. 2d 830 (Tex. Civ. App.). In the latter case it was stated (p. 830):

> We agree with appellee's contention that a valid judgment in the main suit was a prerequisite to judgment against the garnishee in the garnishment case. 20 Tex. Jur. 754; *Kelly* v. *Gibbs*, 84 Tex. 143, 19 S. W. 380, 563. It is also well settled that a garnishment proceeding is ancillary to the main suit and jurisdiction to try the same is dependent entirely on the jurisdiction of the court to try the main suit.

See, also, *Snyder Motor Co.* v. *Universal Credit Co.*, 119 S. W. 2d 792, 794 (Tex. Civ. App.); *Cleveland* v. *San Antonio Building & Loan Ass'n*, 223 S. W. 2d 226, 228 (Tex.)

The character of a garnishment lien under Texas law is accurately described in the dissenting opinion below (R 49):

> The garnishing creditor bore the burden of securing a judgment without which the lien of its garnishment would amount to nothing. No presumption can be indulged that a judgment would be secured. If anything, the presump-

tion is to the contrary. It has been expressly ruled that the doctrine of relation back of the judgment has no application against the Government. *United States* v. *Security Trust & Savings Bank,* 340 U. S. 47, 50. The funds "belonged to" the taxpayer until they had been taken from him by due process of law, and that means until he had had his day in court and a judgment rendered against him. Before that occurred, the income tax lien had arisen and had become valid even as against a judgment creditor.

The dissenting opinion below also correctly observed that (R. 50):—

> The service of the writ of garnishment effected no actual change in the possession of the property. The only way in which it can be claimed to have effected even a theoretical change of possession is that it may be said to have placed the property within the custody of the law, or to have the effect of segregating that portion of the taxpayer's property which might be necessary to satisfy a future judgment against him. That is not enough. Who would share in the property would not be known until the judgment was rendered. What was said in *United States* v. *Knott,* 298 U. S. 544, 550, is applicable here:
>
> "Obviously, the deposit did not divest the company's title to the securities. No one was

> appointed trustee; and, at the time of the deposit, there was no ascertainable beneficiary. Who would share in the proceeds of the securities could not be known until they were exhausted in satisfaction of judgments, or until the entry of the decree of distribution in a suit authorized by the 1933 amendment. While in the case at bar the Supreme Court declared that the deposit created a 'trust fund', the term appears to have been used to connote an inchoate general lien for the benefit of those persons who may become entitled to be paid from the proceeds, either as unsatisfied judgment creditors, or as Florida creditors at the time when insolvency supervenes. Such an interest lacks the characteristics of a specific perfected lien which alone bars the priority of the United States."

In view of the demonstrated inchoate character of the garnishment lien here involved, the only basis on which the decisions below can be sustained is by application of the doctrine of relation back—which this Court rejected in *United States* v. *Security Tr. & Sav. Bk., supra.* The State of Texas has, by legislative fiat, made a garnishment binding on the property from the time of service. Articles 300 and 4084, Vernon's Texas Civil Statutes. This statutory preference may be valid as to others, but it is not binding on the United States. As this Court very aptly pointed out in *United States* v.

New Britain, supra, p. 86, such inchoate liens may become certain as to amount, identity of the lienor, or the property subject thereto only at some time subsequent to the date the federal liens attach and cannot then be permitted to displace such federal liens. "Otherwise, a State could affect the standing of federal liens, contrary to the established doctrine, simply by causing an inchoate lien to attach at some arbitrary time even before the amount of the tax, assessment, etc., is determined." See, also, *United States* v. *Snyder,* 149 U. S. 210, 214. Compare *Illinois* v. *Campbell, supra,* p. 375.

As pointed out at pp. 24-27 in the brief for the United States in the *Acri* case, *supra,* this Court in the *New Britain* case, *supra,* made it abundantly clear that the principle of "the first in time is first in right" applied to the statutory liens there involved, does not apply where the adverse lien is purely potential and contingent. Accordingly, the court below erred in applying that principle to the garnishment lien here involved.

Contrary to the conclusion of the court below (R. 46-47), a garnishment before judgment is no more effective under Texas law than an attachment before judgment under California law. Whatever procedural differences may exist as between the statutes, the substance of the matter is that in both instances the plaintiff must take further steps to secure a perfected or choate lien. Until such steps are taken, the plaintiff has done nothing more than to serve notice of an intention to perfect a lien at some future date. To hold that the lien of the

United States for taxes is subordinate to such a contingent and imperfect lien could postpone the collection of taxes until the rights of an attaching plaintiff are finally determined, and would seriously hinder the Government in the collection of its revenues. "If the purpose of the federal tax lien statute to insure prompt and certain collection of taxes due the United States from tax delinquents is to be fulfilled," as said in the *Security Trust* case, *supra*, p. 51, the lien cannot be subordinated to wholly contingent and undetermined claims against the delinquent taxpayer.

We submit that the court below was in error in holding that the garnishment lien of Sunnyland Wholesale Furniture Company was superior to the tax liens of the United States.

II

The Court Below Erred in Allowing a Fee for the Garnishee's Attorney Out of the Fund Impressed With the Federal Tax Liens

This case was initiated as an action brought by Sunnyland Wholesale Furniture Company in the District Court of Dallas County, Texas, to recover a judgment against the taxpayer for $2,329.27, with interest, in connection with which a writ of garnishment was served upon Liverpool & London & Globe Insurance Company, which company was then indebted to the taxpayer in the sum of $7,500.39. By an amended answer (R. 2-6), the garnishee interpleaded the Acting Collector of Internal Revenue, the Commissioner, and the United

States, and the case was removed to the Federal District Court (R. 1-2, 9), where the Acting Collector, Commissioner, and the United States were dismissed as parties defendant and the United was permitted to intervene (R. 8-14, 43). The garnishee on motion tendered to the District Court $7,500.39, which was accepted and placed in the registry of the court.

The judgment of the District Court (R. 25-27), which was affirmed by the court below (R. 48), ordered the funds deposited with the court to be applied (1) to the payment of the judgment in favor of Sunnyland Wholesale Grocery Company, (2) to the payment of $500 as attorney's fee to counsel for the garnishee, and (3) to the payment of the balance to the United States to be applied on its tax claim.

The Court below relied upon Rule 677, Vernon's Texas Rules of Civil Procedure and authorities thereunder. Rule 677 provides as follows:

> Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this section; where the answer is contested, the costs shall abide the issue of such contest.

We submit that there was no basis in law for the

award of an attorney's fee to be paid out of the fund regardless of whether the garnishment lien or the tax lien had priority. At all events, the United States had either a senior or a junior lien upon the fund, either of which would be enough to prevail as against a party who had no lien whatever. Neither the garnishee nor its attorney had any interest in the fund, far less a perfected prior lien. No rule of local law, providing for payments of costs to a garnishee by either the plaintiff or defendant in the related suit, could operate to defeat the priority of the federal lien. The fact that payment of the garnishee's costs out of the attached fund has been sanctioned in some cases does not serve to give the garnishee any higher rights or any priority over an established lien bolder. The crux of the matter is that the property belonged to the taxpayer at the time the tax lien became impressed upon it. As the dissent in the Court below aptly noted (R. 51):

> As to the five hundred dollars attorney's fee allowed by the district court to the insurance company for interpleading the parties, it seems even clearer to me that that portion of the fund belonged to the taxpayer at the time the lien of the United States arose, and that the attorney's fee could not be allowed out of the funds available for the payment of the tax lien of the United States.

A rule of local law which purports to give a preferred status to an ordinary claimant as against

a duly recorded federal tax lien is clearly invalid. The Texas law does not purport to give any such preferred status to garnishees and should not be construed in a manner which would make it invalid.

CONCLUSION

The decision of the court below is erroneous. The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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SEPTEMBER, 1954.

APPENDIX

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [as amended by Sec. 401, Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505, Revenue Act of 1942, c. 619, 56 Stat. 798.] VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment

creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

* * * * *

(26 U.S.C., 1952 ed., Sec. 3672.)

1 Vernon's Texas Civil Statutes (1925 rev.):

ART. 300. Attachment creates a lien.

The execution of the writ of attachment upon any property of the defendant subject thereto, unless the writ should be quashed or

otherwise vacated, shall create a lien from the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold.

ART. 301. Judgment and foreclosure.

Should the plaintiff recover in the suit, such attachment lien shall be foreclosed as in case of other liens, and the court shall direct the proceeds of the personal property sold to be applied to the satisfaction of the judgment, and the sale of personal property remaining in the hands of the officer and of the real estate levied on, to satisfy the judgment. When an attachment issued from a county or justice court has been levied upon land, no order or decree foreclosing the lien thereby acquired shall be necessary, but the judgment shall briefly recite the issuance and levy of such attachment, and such recital shall be sufficient to preserve such lien. The land so attached may be sold under execution after judgment, and the sale thereof shall vest in the purchaser all the estate of the defendant in attachment in such land, at the time of the levy of such writ of attachment.

13 Vernon's Texas Civil Statutes (1925 rev.):

ART. 4076. Who may issue and when.

The clerks of the district and county courts

and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued.

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the defendant has not within his knowledge property in his possession within this State, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution, sufficient to satisfy such judgment.

ART. 4084. Effect of service of writ.

From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects; nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effect,

shares, or interest as may be necessary to satisfy the plaintiff's demand. The defendant may, at any time before judgment, replevy any effects, debts, shares, or claims of any kind seized or garnisheed, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which when properly approved shall be filed among the papers in the cause in which the suit is pending. In all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit.

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